

Appl. No. 09/558,329
Amdt. dated April 29, 2005

REMARKS

This is responsive to the USPTO Board of Patent Appeals and Interferences' Response to Request for Rehearing dated March 25, 2005 and is being filed along with a Request for Continued Examination. An Office Action dated June 3, 2003 is the last communication from the Examiner which was not related to the Appeal of this application to the Board. Therefore, this Amendment is responsive to the Office Action of June 3, 2003 and takes into account the Board's decision on the Appeal.

Oath/Declaration

The Office Action indicates that the Declaration is defective because the citizenship of inventor Byles was changed, but the change was not initialed. Enclosed herewith is a substitute Declaration signed by Mr. Byles, a copy of which was previously provided to the USPTO. Applicants respectfully assert that the objection to the Declaration has been overcome.

Section 112 Rejections

Claims 30-87 were rejected under § 112, first paragraph, as being non-enabled by the specification. The Board's decision in this case reversed these rejections and as such, Applicants respectfully assert that these rejections have been overcome.

Prior Art Rejections

All of the claims in this reissue application have been rejected based upon one or more of U.S. Patent No. 4,026,129 issued to Sternlieb, U.S. Patent No. 4,181,514 issued to Lefkowitz, U.S. Patent No. 4,675,226 issued to Ott, U.S. Patent No. 5,356,402 issued to Gillies, U.S. Patent No. 4,128,686 issued to Kyle and European Patent No. 261,904 issued to Taylor. Specifically, claims 65, 67-69 are rejected under § 102(b) as being anticipated by Sternlieb. Claims 30-37 and 51-64 are rejected under § 102(b) as being anticipated by Lefkowitz. Claims 1, 3-9, 12, 14-20, 30, 32-38, 51, 53-56, 58, 59, 61-66, 68 and 69 are rejected under § 102(b) as being anticipated by Ott. Claims 30, 32-36, 39, 41, 42, 46-51, 53-56, 65, 68, 69, 80, 83, 84, 86 and 87 are rejected under § 102(b) as being anticipated by Gillies. Claims 2, 10, 11, 13, 21, 22, 31, 52, 57, 60 and 67 are rejected under § 103(a) as being unpatentable over Ott. Claims 1, 3-9, 12, 14-20, 23, 26-29, 37, 38, 43, 58, 61-64, 66, 70, 71, 73, 74, 76-79 and 81 are rejected under § 103(a) as being unpatentable over Gillies in view of Ott. Claims 10, 11, 21, 22 and 57 are rejected under § 103(a) as being unpatentable over Gillies in view of Ott. Claim 25 is rejected under § 103(a) as being unpatentable over Gillies in view of Ott, Lefkowitz and Kyle. Claims 40 and 82 are rejected under § 103(a) as being unpatentable over Gillies in view of Taylor. Claims 31, 44, 45, 52, 67 and 85 are rejected under § 103(a) as being unpatentable over Gillies in view of Sternlieb. Claims 1-23, 25-39, 41-71, 73-81 and 83-87 are rejected under § 103(a) as being unpatentable over Kyle in view of Gillies, Ott and/or Sternlieb. Claims 24, 40, 72 and 82 are rejected under § 103(a) as being unpatentable over Kyle in view of Gillies, Ott and/or Sternlieb and further in view of

Taylor. Applicants respectfully assert that each of these prior art rejections has been overcome by the amendments to each of the independent claims in this application.

Each of the claims specifically recite a plurality of stitch bonding yarns which form a yarn face. The stitch bonding yarns are identified by reference number 18 in the '757 patent and include yarn segments 18' and 18" which extend over or across the upper surface 20 of the web and the lower surface 22 of the web, respectively. This arrangement is particularly shown in Figs. 2 and 5 of the '757 patent. The yarn segments contribute to form the top yarn face 24 and/or a bottom yarn face 26 of the finished fabric which is described in the specification (taken from the '757 patent which is here being sought for reissue) as follows:

It will be appreciated that yarn segments 18' and 18" do not become embedded into the web 12 below surfaces 20 or 22 thereof, but rather extend across the surfaces 20 and 22, and are of sufficient density that yarn segments 18' cooperate to define a top yarn face 24 of fabric 10 above web upper surface 20, and yarn segments 18" cooperate to define a bottom yarn face 26 of fabric 10 below web lower surface 22. Faces 24 and 26 are effectively continuous such that web 12 is not exposed thereat, although small gaps or interstices (as at 28) between adjacent yarn segments 18' or 18" may allow viewing of felt surface 20 or 22 upon close inspection. It will be noted that Figs. 3 and 4 are greatly exaggerated to show interstices 28 in faces 24 and 26. (Col. 2, lines 52-65, emphasis added).

In other words, the resulting product according to this invention includes an upper and/or a lower yarn face. The yarn face is defined as having very closely spaced or densely packed yarn segments of the stitch bonding yarns so as to be effectively continuous such that the felt web is not generally exposed at the yarn face. One benefit of such a yarn face is that the fabric for the incontinent pad has a comfortable surface (i.e., facing fabric)

for the patient at the top yarn face. The felt is not readily seen through the top yarn face and does not significantly protrude felt fibers against the patient's skin. The bottom yarn face provides a surface which may be used, for example, for adhesive connection to a barrier layer without interfering with either the structural rigidity or absorbency provided by the felt web.

Applicants have amended each of the independent claims to recite that the yarn face is effectively continuous such that the corresponding web surface is not generally exposed at the associated yarn face. The amendments to the original claims in the '757 patent are evident as being underlined hereinabove. Each of the new independent claims (nos. 30, 39, 51, 58, 65, 70, and 80) are likewise amended herein. The amended claims recite that the web surface is "generally" not exposed at the yarn face because as disclosed in the specification and repeated herein above, small gaps or interstices between adjacent yarn segments may allow for viewing of the felt surface upon close inspection. Nevertheless, Applicants respectfully assert that the yarn faces recited in each of the rejected claims is not presently shown, disclosed, or otherwise suggested in the cited art.

Each of the rejections and primary references relied upon will now be individually addressed.

(1) Sternlieb U.S. Patent No. 4,026,129

Sternlieb is directed to a dimensionally stable fabric especially useful for bed sheets, or for the uppers of foot gear such as sneakers, athletic shoes, etc. (Col. 1, lns. 31-33.) The fabric, as particularly shown in the cross-sectional view of Fig. 7, includes a web

1 with a scrim layer 9 applied to one surface thereof. The two layers 1, 9 are stitch-bonded together by knitting yarns 11,13.

The Sternlieb patent clearly discloses and teaches in Fig. 7 that portions or ribs of the felt web 31 are exposed and project beyond the upper surface of the stitch bonding yarn segments 11 and 13. Therefore, the upper surface of the fabric in Sternlieb clearly does not provide a “yarn face” as claimed in the present application.

The rejection alleges that the lower surface of the fabric of Fig. 7 in Sternlieb presents such a yarn face. However, such an allegation is directly contrary to the teaching of Sternlieb. The patent describes the scrim 9 as presenting an “exposed abrasion resistant surface 26 of the scrim.” (Col. 3, lns. 1-2, emphasis added.) Accordingly, the scrim layer 9 is “exposed” on the lower surface of the fabric as shown in Fig. 7. This is directly contrary to Applicants’ claimed invention in which the surface of the scrim, felt web or other material is not exposed because the stitch bonding yarns define a “yarn face”, i.e., yarns that are close enough to be effectively continuous and thereby cover a particular surface of the felt web as recited in the claims.

Moreover, a side-by-side comparison of Fig. 7 in the Sternlieb patent with Figs. 2, 5, 7 and 8 of the present application presents a clear distinction.

The stitch-bonding yarns in the present case provide an uninterrupted, substantially continuous face; whereas the stitches 11, 13 in Fig. 7 of Sternlieb are spaced significantly from one another thereby providing a substantial amount of exposed scrim sheet and felt

web. As such, it is abundantly clear that Sternlieb fails to teach, disclose or otherwise suggest any yarn face as recited in Applicants' claims.

(2) Lefkowitz U.S. Patent No. 4,181,514

The Lefkowitz patent shows a fibrous bat 2 with a number of stitch yarns 3, 4 significantly spaced from one another as shown particularly in Figs. 3 and 7 of that reference.¹ Lefkowitz is directed to a filter material. The stitch yarns 3, 4 "comprise metallic monofilament or multi filament yarns or glass multi filament yarns. Such yarns may be used alone or in combination with other non-metallic yarn materials." (Col. 3, lns. 1-4.) Since Lefkowitz is directed to a filter, inherently, a fluid or other medium must pass through the fibrous bat and stitch yarns. Since the stitch yarns are metal, the material being filtered must escape the fibrous bat 2. If the stitch yarns produced an effectively continuous yarn face as claimed in Applicants' invention, then the filtered material would not be able to escape the allegedly effectively continuous face. Therefore, the stitch yarns in Lefkowitz cannot be effectively continuous. This fact, in addition to the disclosure of the Lefkowitz patent, renders the anticipatory and obviousness related rejections based on Lefkowitz erroneous.

The Examiner has previously acknowledged that Lefkowitz fails to teach, disclose or otherwise suggest an effectively continuous yarn face comprised of stitch-

¹ The identified figures in Sternlieb '129 and Lefkowitz are considered to accurately portray those respective inventions in contrast to Figs. 3 and 4 of the present case which are "greatly exaggerated" as expressly stated in the specification.

bonded yarns. The Examiner's position with respect to the Lefkowitz patent was that Applicants' yarn face was not claimed as "effectively continuous." Nevertheless, as a result of the present amendments, Applicants respectfully assert that the yarn face is now explicitly described as effectively continuous thus overcoming the rejections based on Lefkowitz.

(3) Ott U.S. Patent No. 4,675,226

The Ott patent is directed to a stitch-bonded composite wiper having strength and absorbency performance and other features for a variety of industrial, institutional and health care wiping uses. The Ott patent discloses that the preferred stitch used in that product is a length of 3 mm and is spaced in the cross web direction at 14 stitched lines per inch or 14 gauge. (Col. 3, lines 31-34). The stitch density of the wiper disclosed in Ott is very low and is not consistent with an effectively continuous yarn face according to Applicants' claimed invention. The low density of stitches necessarily creates large open gaps exposing the underlying material rather than an effectively continuous face as in the yarn face.

The Office Action does not dispute such an interpretation of the Ott patent but merely reiterates that the effectively continuous feature was not expressly recited. Once again, Applicants submit that the amended claims presented herein recite that the yarn face is effectively continuous such that the rejected claims now distinguish over the cited references.

(4) Gillies U.S. Patent No. 5,356,402

The Gillies patent discloses a polyester thread having a thickness of approximately 150 denier in which the stitch bonding rows are spaced apart to give approximately 2 to 10 rows per inch and most preferably 5 rows per inch such that each row contains approximately 6 to 20 stitches and most preferably 12 stitches per inch. (Col. 5, lines 25-36). The result of such a low density in both Ott and Gillies is necessarily to create large open gaps rather than an effectively continuous face.

Once again, it is not disputed that Gillies fails to teach, disclose or otherwise suggest an effectively continuous yarn face. Rather, the rejection again takes the position that the term "yarn face" in the claims was not construed to be "effectively continuous." Applicants have now expressly added the phrase to the claims. Applicants assert that such an amendment overcomes the rejections based upon Gillies, Ott and Lefkowitz are.

(5) Section 103 Rejections

The Section 103 rejections in the Office Action combine the primary references of Sternlieb, Lefkowitz, Ott and Gillies with each other or other identified secondary prior art. However, nowhere in the Section 103 rejections it is asserted or alleged that any of these references teach, disclose or otherwise suggest an effectively continuous yarn face as that term is now used in the Applicants claims. Therefore, Applicants distinguishing comments set out above with respect to the Sternlieb, Lefkowitz, Ott and Gillies references apply equally to the Section 103 rejections, and the rejections are in error for the same reasons.

In summary, the prior art documents cited in the rejections of claims 1-87 fail to disclose, teach or otherwise suggest a “yarn face” at the top and/or bottom surfaces as in Applicants’ now claimed invention. The teaching of these prior art patents would lead one of ordinary skill in the art directly away from Applicants’ claimed invention in which the stitch bonding yarn segments contribute to define top and/or bottom yarn faces that are effectively continuous such that the web is not exposed. Moreover, one of ordinary skill in the art would readily be able to optimize the stitch density relative to the selected stitch thickness or denier for a particular application to achieve the yarn faces as described in the rejected claims.

Applicants also wish to point out that the recitation of the yarn face in each of the amended claims not only distinguishes the prior art references of record, but is also compliant with § 112. The yarn face is described as being effectively continuous such that the corresponding web surface is not exposed through the associated yarn face. The effectively continuous nature of the yarn face is definite and a standard is provided for one of ordinary skill in the art to determine the scope of the claimed invention. Namely, “effectively continuous” means that the web surface is not exposed through the yarn face.

Moreover, claims 11 and 22 have been amended herein to recite that the yarns of the yarn face are not embedded in the surface of the web as described at Col. 2, line 55 of the ‘757 patent. Such a feature provides an additional basis to distinguish the cited art.

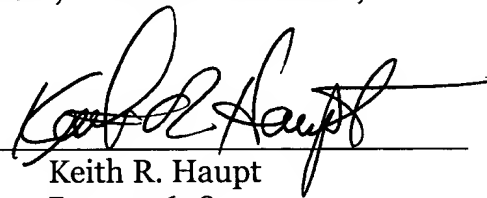
As a result of the amendments to the claims and the remarks given herein, applicant respectfully asserts that the rejections of claims 1-87 have been overcome.

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Further, applicant asserts that claims 1-87 as amended herein are allowable and request notification of same at the Examiner's earliest convenience.

Respectfully submitted,

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